I.F.A.II.

1939

Department of Revenue

OFFICE Office Board

STATION Madras

Ms No. 2746

Dated 28/9/39

43283/39

U. E

SECRET

Pages in the file E 720 N-7 3

(SUBJECT)

Duties Bellary — Bellary Dt
Municipality — Encroachments on municipal
Road margin — Assessment
fixation

C.F, 32.

In reply, please quote number, date and short title.

B3497. 1, P

Revenue DEPARTMENT.

Received Registered A3283

From (Name) A.D. Crombie Esq., C.I.E., I.C.S.,

(Designation) Collector

Post Box ____, (Station) Bellary,

Telegraphic Address ____

OFFICE OF THE BOARD OF REVENUE 17 JUL 1939 MADRAS

To

The Secretary to the Board of Revenue,

Madras.

R.C. No. 3214/39 A.1 dated 15-7- 19 39

Sir,

Enclosures
1. Draft written statement
2. Plaint copy

Spare Copies 7 (A)

4-1-4 (A)

Suits - Bellary District Munsif's Court - 8 & 462/39 - Sabapathi Rao Sri - Plaintiff - Collector - Defendant - written statement submitted for approval.

Ref: Board's Res. No. 2160 dated 15-5-1939.

I invite your attention to this office R.C. No. 3214/38 dated 24th April 1939 and the orders thereon in the Board's Resolution cited above. The Revenue Divisional Officer, Bellary has issued notice under Section 6 of the Madras Land Encroachment Act to Sri R. Sabapathi Rao, the plaintiff in this suit who has thereupon filed a suit against Government praying for a permanent injunction. The history of the case has been clearly dealt with in my letter referred to above.

4-12 cf.

4-1-4 (A)

2. I submit herewith a copy of the plaint filed and the draft written statement for the Board's approval and return for being filed in the court. The case is posted to 14-8-1939.

4-12 cf

15 cf

Subhani. Khan
15.7.39

P.S. 15/7.

For Collector.

15/7

3

Suits (Bellary) —

Bellary Dr Munsiff

Otno 190/38 — Bellary

Town — Encroachment

Defence

11.55 / 2 / 26/7

Today

A 3283/38 pl eyQ

AS(CB)

DESPATCHED

(1st Cl) - JUL 1939

Ref A 3283/38-1 dated

The Coll is requested to submit a clear sketch of the suit site, and a copy of the written statement filed by the Municipality.

2/. The originals of the plaint and the written statement submitted by the Coll are returned for submission of copies to the Board

3/. The Coll is requested to obtain a fairly long adjournment of the suit

6/24/7

To the Coll of Bellary with originals of the plaint and written statement returned

14/25/7; if necessary.

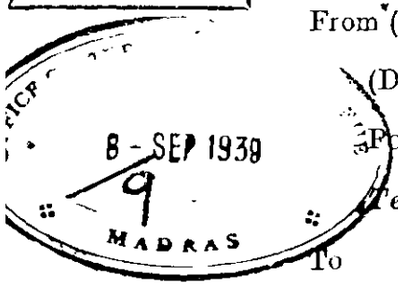
25/7/39

5

Revenue DEPARTMENT.

In reply, please quote number, date and short title.*

Received _____ *Registered* A 40814



From (Name) A.D. Crombie Esquire., O.I.E.,I.C.S.,

(Designation) Collector,

Post Box _____, (Station) Bellary.,

Telegraphic Address _____

To

The Secretary to the Board of Revenue,
Madras.

Ref.c. *No.*3214/38 A1, *dated* 5th September 1939.

Sir,

Suits - Bellary District Munsiff's Court
S.S. No. 190/38 - Bellary Town encroachment
plaintiff Sabapathi Rao.Sri.A. - Defence

Board's Ref. A. No. 3285/39-1 dated 26th July 1939.

ENCLOSURES
Sketch 1
Copies letter

PARE COPIES

I enclose a clear sketch of the suit site with a copy of the written statement filed by the Municipality and a copy of the Government Pleader's opinion.

I also enclose a copy of the plaint, and a copy of the draft written statement, for approval of the Board.

Abdul Khan
6.9.39

For Collector.

RA/5-9

6.9.

R. F. XVII-26—801,266—27-2-37

R.F. XVII-26.

District Bellary

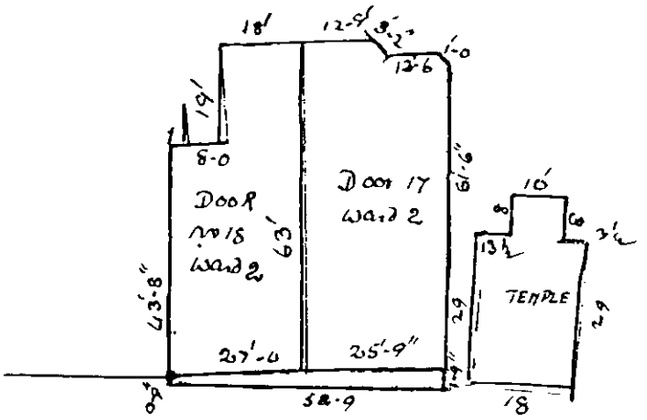
Taluk Bellary

7

Village { No. 68
Name Bellary.

Field No. 499-1(part) Area Acres

Sketch showing the pial encroachment made by Sri. R. Sabapathy Rao



☐ Encroachment.

Tahsildar
Bellary

R. Venkatasubbaiah
24/8/39
Inspector.

23/8/39

Scale / inch=~~One~~-Chain. 33ft.

Rao Sahib
20.8.39
R.I. Bellary

~~13~~ 9

In the court of the District Munsiff of Bellary.

O.S. No. 190 of 1938 21462/39

Between :-

R. Sabhapathi Rao .Plaintiff

and

1. The Municipal Council Bellary by its executive authority the Commissioner
2. The Secretary of State for India represented by Collector, Bellary. } Defendants

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The above named plaintiff begs to state as follows:-

1. The Plaintiff is R. Sabhapatni Rao son of Venkata Narasaiah aged 45 years Brahmin Advocate Bellary.

The address of plaintiff for service is the same.

2. The defendants are

(1) The Municipal Council Bellary represented by executive authority, the Commissioner, Bellary

(2) The Secretary of State for India represented by District Collector, Bellary.

3. The Plaintiff is the registered owner of two adjoining houses bearing Municipal Door Nos. 17 & 18 in the 11 Ward in Goldsmith street Bellary. The site on which there two houses stand together with old buildings thereon were brought by the father of the plaintiff and his father, prior to 1888: and they were demolished and the present houses were built by plaintiff's father from 1888 to 1890. On 25-8-1888, he applied to the Chairman of the Bellary Municipality for rebuilding the houses annexing a plan of the proposed construction. The matter was placed before the building petition Commitee which sanctioned the permission, prayed for on 27-6-1888, certified copies of the application, plan and Building Petition Committee's resolution, obtained by plaintiff's father in 1890 and in the custody of the plaintiff are herewith produced. In accordance with the recommendation of the Building Petition Committee, the then Chairman granted permission by his licence No. 36 dated 12-9-1888, which in original is herewith produced. The

10 44

~~accordance with the~~ The houses as they now stand were completed by about ~~f~~ 1890(1889) . At a family partition, the house bearing present door No. 18 fell to the share of plaintiff's father and No. 17 to Plaintiff's uncle , R.Venkata Krishnaiah, who enjoyed it till he died issueless in 1903. After him his widow enjoyed it till she died in 1919, when it was inherited by the plaintiff and his elder brother. Plaintiff's father died in 1914, and the house bearing No.18 then survived to the plaintiff and his ~~brother~~. elder brother. As plaintiff is a permanent resident of Bellary both the houses were registered in his name on behalf of his joint~~f~~ family.

4. The small pials in front of the houses, on either side of the main door way of each were, were built on plaintiff's own site, within the limit of the side drain and with the permission of the Chairman under the licence referred supra. The ~~service~~ cornice projection of the first floor, which is about 6 inches within the edge of the abovementioned pials, is similarly covered by the licence. In the place of several old door-steps enabling the owners of the houses which were rebuilt upon to gain access to the road in front across the deep side drain in front of the houses, plaintiff's father put ~~me~~ upon a slab across the side-drain in front of the main-door of each of the houses. This was necessary and has been in existence ever since 1889. Over the verandan in each house first floor there is a continuous sloping roof of zinc-sheet on wooden planks. The eaves of this roof extend about a foot in front of the pials. The water from these eves drop into the side drain on its outer edge. This has been in existence from 1889. The two door-steps and the projecting ~~eaves~~ eaves of the roof are therefore being enjoyed openly, as of right and without interruption for over the statutory period and the plaintiff and his predecessors in title here perfected their right thereto by proscription.

5. On 17-6-1937, the Special Officer of the 1st Defendant Municipality issued a notice with reference to each of the two plaintiff's houses Nos. E 106 & 107/11/37-38, calling upon plaintiff~~x~~ to remove the following encroachments :-

(1) Pial 26' X 2'

(2) Step 4½' X 2½'

(3) Roof projection 26' X 1' (with reference to each of the houses.)

Plaintiff replied to the setting forth the facts enumerated in paras 5 & 4 supra, and that none of the items are encroachments. This reply was delivered in the Municipal Office on 22-6-1937. Afterwards, the Survey Party while settling the houses inspected the documents referred to para 5 supra. On 27-12-1937, the Commissioner of the above Municipality served a second notice No. 106 - 107/2 on Plaintiff's brother during Plaintiff's temporary absence from Bellary. On 15-1-1937 Plaintiff replied thereto mentioning about his reply in June and to inspection by the surveyor and requiring to be enlightened as to the decision on his previous representations. There was no reply to this also; but on 21-3-1938; he was served with a notice in connection with each of the houses, enumerating the nature and un-easement of the encroachment (un-objectionable), and as no licence was obtained for the same they would be removed at plaintiff's cost the encroachments:-

(A) with~~x~~ reference to house no. 17 Ward No.11

(1) Pial 21-0' X 21'-0"

(2) Step 4'-6" X 4'-9"

(3) Balcony 26'-3" X 6'-02"

(4) ~~Sun~~ Sun-shade 27'-0 X 1'-6"

It would thus be seen that in the last notice the balcony of 1 foot wide with No.13 and 6 feet wide with No.17 have been added to the first notice; and with reference to the roof-projection which is termed sunshade in the last notice, the width has

12-16 -4-

has been increased from 1 foot to 1½ feet.

As shown above none of these items are encroachments and the defendant has no right to compel the plaintiff to apply for licences for them at rates specified, on pain of removal. The plaintiff is entitled for an injunction against the defendant restraining the defendant from interfering with plaintiff's enjoying of the alleged encroachments.

6. Plaintiff values the relief for injunction with reference to each house under section 7(10) (d) of the Court Fees Act at Rs.5/- and prays a total Court fee Re.1/-.

7. The cause of action for the suit arose at Bellary between 25-8-38 and 12-9-38, for over the statutory period after 6 and even before) 1889, on 17-6-1937, 20-6-1937 15-12-37, 27-12-37, 15-1-37, 5-3-37, 21-3-37 (the date of notice service and replies)

The plaintiff therefore prays that the defendants may be restrained by a permanent injunction from interfering with the plaintiff's possession and enjoyment of what are claimed by the defendant to be encroachment with reference to his houses no. 17 & 18 of 11 ward Bellary Municipality , together with costs of the suit and such other relief as the Hon'ble Court may deem fit .

/Sd/ K. Sabhapathi Rao
21-6-38.
Plaintiff.

(True copy)

6.9

9

In the Court of the District Munsiff of Bellary

O.S. 190/38

Between

R. Sabhapathi Rao — Plaintiff

Vs.

The Municipal Council, Bellary by its Commissioner, Defendant.

..... first Mkl cw

written statement of defendant under O.S.A.I.C.P.C.

.....

The defendant above named states as follows:-

1. The Plaintiff's suit is false, opposed to law and not maintainable.

2. Excepting the facts expresaly admitted herein this defendant denies all others and puts the plaintiff to strict proof of them all.

3. From the allegations in the plaint para 3, plaintiff's brother has a right also in the suit house. Hence he is a necessary party to the suit.

4. The plaintiff is put to strict proof of all the allegations in para 3 & 4. The site occupied by the suit projections is Government property vesting in the Municipal Council for Municipal purposes.

The Government is therefore a necessary party to the suit.

5. Even according to the plaint the door-steps and other projections were constructed with a licence. Unless title to the site is proved there can be no question of adverse possession for a license. Plaintiff is however put to strict proof that he has perfected his title by adverse possession. In any event, even if it is held that he has so perfected his title the present suit for permanent injunction is not maintainable as the suit projections are into a public street.

6. Under section 183 (1) of the District Municipalities Act. the council is entitled" to impose such conditions (as) restrictions as it thinks fit" for construction of any step or drain covering for access to the house. Unless the conditions imposed by the council are set aside the plaintiff ~~has been required to take out a licence.~~ is not entitled to sue for an injunction.

7. The measurements for the Balcony with reference to house No. 17 is 26'-3" X 1'-0" in notice to the plaintiff dated 21-5-38. If it is 6' it is a clerical error. As the encroachments are objectionable the plaintiff has been required to take out a license.

14 ~~to~~ -2-

8. The suit as framed is not maintainable ; the plaintiff should have asked for a declaration of title as otherwise he is bound to take out a license.

9. This defendant therefore prays that the plaintiff's suit may be dismissed with costs.

Commissioner.

I, Commissioner, the Municipal Council, Bellary , defendant above named, do hereby declare that what is stated above is true to my information which I believe to be true.

Signed and verified at Bellary this day of 1938

Commissioner, Municipal Council
Bellary.

Pleader for Defendant.

(Sd) A.V. Krishna Rao.
9-9-38
Commissioner.

(True copy)

6.9.

7 15

In the Court of the District Munsif of Bellary

O.S. No. 190 of 1938.

Between:-

R. Subhapathi Rao Plaintiff.

and

1. The Municipal Council Bellary
2. Secretary of State for India represented by the Collector , Bellary. Defendants.

Govt

ten Statement on behalf of 2nd Defendant.

under order VIII Rule 1 Civil Procedure Code.

The Defendant above named submits as follows:-

1. The description of this Defendant is wrong and contrary to the Government of India Act 1935. The Correct description is

2. The Suit for injunction is not maintainable in law.

3. The Plaintiff is put to strict proof of his title by adverse-possession as against this Defendant.

4. In other respects this defendant adopts the written statement of 1st defendant, The Municipal Council Bellary.

5. The Plaintiff's suit may therefore be dismissed with costs.

Advocate for 2nd Defendant. 2nd Defendant.

Verification:- I, Collector Bellary do hereby declare that what is stated in all the paras hereof is true to my knowledge and information which I believe to be true

2nd Defendant.

6.9.

+- 17

Copy of letter No. G... No.250 dated 19- -38 from the Government Pleader , Bellary to the Collector, Bellary.

Opinion.

1. The Government would be a necessary party and should be added as a party as has been done in 2 or 3 other suits against Municipalities now pending in Court. In such cases the proper thing for the Municipality would be to raise a plea in the written statement that the Government is a necessary party to the suit.

2. This should be so however where it is necessary to contest the suit in which case the Government will have to file a written statement after obtaining the necessary sanction of the Board. But the question is, is it necessary to contest the suit in the circumstances mentioned by the Commissioner and especially in view of the offer to compromise the claim made by Plaintiff on terms which Commissioner considers are fair and reasonable. My own view is , in view of the unsatisfactory evidence available with the Municipality (due to the absence of a proper Town Survey, which has come to my knowledge in 2 or 3 other suits against Government) the compromise may be accepted with alterations if any that may be considered necessary.

(Sd) N. Mrityanjaya Sastri
19-8-38
Government Pleader.

(True copy)

Copy of letter No. G.P. No. 58 dated 10-4-39 from the Government Pleader, Bellary to the Collector, Bellary.

R.C. No. 341 /38A1 dated 4/4/39.

Suits - O.S. 190/38 IMC Sabapathy Rao Plaintiff.

I have discussed the matter with the Vakil for the Municipal Council Mr. K. Kesava Rao. I invite also your attention to the decision in 1937 M.LJ.597:

1. You may direct the Municipality to file an application in Revision to the High Court.

2. In view of the fact that the Plaintiff contends that he has ~~preferred~~ perfected his right by adverse possession for over 30 years against Municipality you may direct steps to be taken against Plaintiff for removal of the encroachment by summary process so that Plaintiff will be compelled to implead the Government as a party.

3. Also as the District Munsif appears to have remarked in the judgment the Government has not itself filed an application for being impleaded, I might also file an application to be impleaded if you instruct me to do so.

18 +2

You may decide on the course of action to be taken.

(Sd) P. Mrityanjaya Sastri

10-4-3

Government Pleader.

(True copy)

2/6.9

[Fwd]

Suits (Bellary) —
Bellary Dt Munsiff —
Oprs 190/38 — Bellary
Town — Encroachment
Municipal drains —
Eviction — Defence
Sanctioned

11.10 Am
28/9

29/9

LEE
CMT
29/9

A 3283/38 & 1 cf Q
A 4084/38 & 5 cf Q
(Res) Mis 2746A 28.9.39

The Board
sanctions the defence
of the suit, and
approves the draft
written statement
subject to the following
modifications :—

& 15 cf.

(1) Add the following
at the end of para 1
" The Correct description
is " the Province of Madras
represented by the Coll
of Bellary "

(2) Add the following
as para 3, and renumber
the remaining paras

20

" The provisions of Section 80
CPC have not been
complied with, and
the suit is unsustainable "

26/9

27/9

To the Coll of Bellary

Date of hearing not reported

Note file

Suit – (Bellary) – Bellary Municipality – O.S. No 190/38 – Bellary Town – Encroachment on municipal drains – Eviction – Defence – Sanction

~~MT~~ / ~~S~~ / AS (LR)

A 3283/39 from the Coll of Bellary with Board's Ref A 3283/39-1 dated 26/7/39 pr 1 of pr 3 of

Sketch at pr 7 of A 4084/39 from the Coll pr 5 of

TO AS (LR)

Please see the Coll's letter at pr 1 of.

2/ The facts of the case are given in the Coll's letter at pr 1-4 of of DP RT 2160 dated 15/5/39, in which the Board approved the Coll's action in having asked the RDO to evict the encroachments made by the plaintiff, so that the plaintiff might be driven to file ~~that suit~~ both against the Govt and the Municipality. The plaintiff has now filed the suit against both the Govt and the Municipality praying that the defendants should be restrained by a permanent injunction from interfering with his possession and enjoyment of the suit site. A

pr 7 (A)

pr 4-5 of (A)

pr 9-12 of

Sketch showing the suit site is at p7 of. The plaintiff can have no ~~some~~ manner of right to the suit site, which is a municipal drain. Even if the plaintiff can prove adverse possession as against the Municipality for 30 years, he cannot prove adverse possession as against the Govt for a continuous period of 60 years. The defence of the suit may be sanctioned and the draft written statement may be approved, subject to the addition of the following sentence at the end of para 1 — p17 of

vide 'B' on p3 of (A)

"The correct description is "the Province of Madras" represented by the Collr of Bellary" p15 of A

18/9

20/9

From the records submd. by the collr. it is seen that the plff. has not issued a notice of suit under Sec 80 C.P.C to the Govt. Therefore the following plea may be inserted as para 3 of the draft written Statt. of the Dft

Precedent at (D) p399 (D)

of the paragraphs re-numbered

"3. The provisions of S. 80 C.P.C have not been complied with and the suit is unsustainable"

A & B may be approved.

Ch
27/9
27/9

Lu
27.9.39

SECY.
25 SEP 1939

M-1
27/9

AS (LR)
~~Thro' B Sec~~
27/9

To AS (LR)

Draft submitted

E.
26/9

VS
26/9

Lu
27.9.39

A2

Pl. note Asstt Secy's Scn
himself to see N.F. Short Papers
of this kind needs to be seen in
A Sec in future.

26/9

No 2746

Dated 28/9/39 Two Members Full Board.

A.D.S. Assistant Secretary

I.A. and L.R. | Land Revs | Settlement. | Separation Revs | Joint Secy. | Secretary: | M.4. | M.3 | M-2 | M-1

1. Open file seen by

2. Final draft seen by

3. Now circulated to

4. Initials.

Passed for record

Secretary

Joint Secretary

~~A.S.(S.W)~~

A.S.(L.R) 4/10

~~A.S.(Sett)~~ 4 2/10

A.S.(Excise) 4 2/10

A.D.S & L.R.

~~I.A.~~

NOTE.- Entries not required to be scored out.

Pl. mark border files in blue.
I found nos in the border file

4/10

Sir,

Each file has been noted & forward file ~~where no forward files for this are~~ that is

4/10 4/10

1 1937